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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>R.W.,<br><br>Defendant and Appellant. | E074370<br><br>(Super.Ct.Nos. FELJS18000123 & FELJS19000163)<br><br>OPINION |

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama, Judge. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## I

## INTRODUCTION

Defendant and appellant R.W. appeals from the trial court's order extending his mentally disordered offender (MDO) commitment pursuant to Penal Code[1] section 2970 et seq. After counsel filed the notice of appeal, this court appointed counsel to represent defendant. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), requesting this court to undertake a review of the entire record.[2] Based on our independent review of the record, we find no error and affirm the judgment.

## II

## FACTUAL AND PROCEDURAL BACKGROUND[3]

An officer testified that on February 3, 2006, he made contact with defendant after receiving a vandalism call. Defendant was taken into custody. "[T]he primary officer

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[1] All future statutory references are to the Penal Code unless otherwise stated.

[2] As appellate counsel notes, we are not required to conduct an independent review of appeals from findings that a defendant meets the criteria under the Mentally Disordered Offender Act (MDOA) (§§ 2962, 2966, subd. (b)). (*People v. Taylor* (2008) 160 Cal.App.4th 304, 312 ["[T]he *Anders*/*Wende* review procedures do not apply to postconviction commitments under the MDOA. Such review is required only for 'appointed appellate counsel's representation of an indigent *criminal* defendant in his first appeal as of right.' [Citation.]"].) However, we shall exercise our discretion to conduct such a review in the instant appeal. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, fn. 7 ["The court may, of course, find it appropriate to retain the appeal."].)

[3] The factual background of defendant's underlying criminal offenses is taken from this court's prior nonpublished opinion in case No. E062220. (*People v. Winter* (June 16, 2015, E062220) [nonpub. opn.].)

[placed defendant] into the police car, at which point [defendant] became very uncooperative and hostile." Defendant was "[v]erbally abusive" and spat upon the officer.

On October 1, 2011, another officer came into contact with defendant after being dispatched to an alleged battery. Defendant had attempted to use a debit card bearing a female name at a retail establishment. The cashier questioned him about it and asked for identification. Defendant "got upset and refused to give the female the identification." Defendant slammed his bags on the countertop in anger. The cashier became frightened and threatened to call the police. Defendant knocked the phone out of her hand. Defendant scratched the victim's arm in doing so. Defendant pled guilty to assault and criminal threats.

On February 5, 2012, the same officer came into contact with defendant again when responding to a call that defendant was threatening someone with a screwdriver. When the officer arrived on the scene, there were several children 11 years of age and younger around. When speaking to defendant, the officer testified defendant's "demeanor was absolutely erratic." Defendant told the officer to "stop having those . . . kids running around like prostitutes, because they look invitational." Defendant threatened that "when he got out of jail, he would come back and rape the first child that he saw and kill the neighbor."

When the officer and his partner attempted to arrest defendant, he "attempted to physically assault" the officer. The officers "took [defendant] to the ground when he was

resisting . . . the entire time and was kicking his legs . . . ." While the officers attempted to walk defendant toward the police car, he "turned his arms violently and his shoulders violently, attempted to head butt" one of the officers. Defendant was later convicted of criminal threats and assault upon a police officer.

On another occasion, defendant grabbed a female security guard by the hair, hit her head on the window, and then punched her in the back of the head after she flashed her lights at him. Defendant was convicted of battery with serious bodily injury. Defendant also had separate convictions for disturbing the peace in 2007 and 2011.

Defendant's parole release date was February 4, 2014. Defendant's treating psychologist testified that up to February 4, 2014, defendant had received 90 days of mental health treatment for schizophrenia, paranoid type.

On February 4, 2014, defendant was committed to the Department of State Hospitals pursuant to section 2962. He was sent to Patton State Hospital (Patton) on February 25, 2014.

On June 25, 2014, the Board of Prison Terms (BPT) determined defendant qualified as an MDO and continued his commitment. Defendant subsequently filed a petition on July 31, 2014, seeking review of the BPT's determination. After the jury found defendant met the criteria of an MDO under the MDOA (§§ 2962, 2966, subd. (b)), the trial court dismissed defendant's petition and continued his civil commitment.

On February 3, 2017, defendant's civil commitment at Patton was continued. About seven months later, on September 5, 2017, defendant was released to CONREP.

However, within 24 days after being released from Patton, on September 29, 2017, defendant broke the terms and conditions of his parole and was returned to Patton. Thereafter, defendant was formally revoked from CONREP.

On July 11, 2018, the District Attorney of San Bernardino County filed a petition to extend defendant's MDO commitment for one year to February 27, 2020.

On August 3, 2018, counsel was appointed for defendant.

The July 11, 2018 petition was not heard on its merits due to continuances, before another petition to extend defendant's commitment was filed on August 7, 2019. The August 7, 2019 petition sought to extend defendant's MDO civil commitment for another year to February 27, 2021.

On August 7, 2019, defendant waived his right to a jury trial.

A bench trial on both petitions to extend defendant's civil MDO commitment was held on October 9, 2019. At that time, the parties agreed to submit the matter without testimony based upon the 14 exhibits introduced into evidence by the People on September 25, 2019. The parties also stipulated that the case could be tried based on the exhibits with the parties waiving any objections to the admission of the exhibits, including objections pursuant to *People v. Sanchez* (2016) 63 Cal.4th 665. Defendant also decided not to testify. The exhibits consisted of the Department of State Hospital's reports, a transcript of an earlier MDO hearing for a prior commitment of defendant, CONREP reports, a police report, and defendant's criminal rap sheet.

In pertinent part, a June 20, 2019 report from Patton indicates a staff psychologist and a staff psychiatrist diagnosed defendant with a severe mental disorder within the meaning of section 2962, subdivision (a), specifically schizophrenia. Defendant's historical symptoms included paranoid ideation, isolation, delusions, poor hygiene, and poor thought organization. The records from defendant's prior hospitalizations and prison also indicate a history of mania, instances of euphoric mood, increased energy, decreased need for sleep, excessive involvement in pleasurable activities, extremely disorganized thinking, and paranoid ideation.

Since defendant's return to Patton, his primary symptoms had been paranoia, thought disorganization, mild depression, excessive sleep, guardedness, and self-isolation. He had not shown delusions or mood swings since his readmission and continued to deny experiencing any mental health symptoms. However, when pressured, defendant claimed that he had "'thought blocking,'" which he defined as having problems getting his thoughts out. Defendant's treating doctors noted that defendant's ability to recognize his symptoms was extremely poor, albeit he had improved that ability during the prior year, but he still lacked any real insight to his mental illness.

Defendant also had a significant substance abuse and alcohol use history. He was aware that he had a problem with alcohol and wished to remain sober. However, defendant had indicated his intention to use marijuana when released and believed marijuana use was healthy because marijuana is natural. In the 24 days he had stayed in

the community, defendant denied any substance or alcohol use and CONREP did not suspect any such use.

The June 20, 2019 report also noted that defendant currently believed he was "'fine'" and minimized his behavior while in CONREP. He also believed that he was capable of living in the community and struggled to understand why he was not given a "'second chance.'" He further stated that he did not do "'anything really bad'" and that the CONREP rules were "'too much'" and "'dumb.'" When defendant was first returned to Patton after his CONREP release was revoked, he refused to attend therapy sessions and initially spent most of his time in bed, sleeping. He also claimed that he would only be at Patton for six months before being released again and he did not really need to do anything during that time. When defendant was told he needed to participate in treatment and work on the behavior that lead to his revocation, he stated that he already knew everything and just needed to do his time. Defendant later acknowledged that he needed to "'do something'" to be released into the community. In the past year, he had spent most of the day in bed but began to attend group therapy sessions regularly. His most recent group attendance rate was 93 percent.

According to the June 20, 2019 report, defendant's mental disorder was not in remission. He continued to demonstrate symptoms of his mental illness, primarily "paranoid ideation, loose associations, and tangentiality." Defendant was able to maintain coherent conversations for a short period of time but lost that ability when asked technical questions or during longer conversations. In the past year, he had improved his

focus and concentration during discussions of his "problems" and was able to maintain a 20-minute conversation instead of just a 10-minute conversation. He also responded to questions with one word answers that did not make any obvious sense. However, when further questions were asked, the listener was sometimes able to see the connection between what defendant was attempting to discuss and the subject at hand. These connections, nonetheless, were "often weak and frequently secondary to the topic, rather than the primary idea," albeit the responses were reality based, not delusional. The doctors opined that defendant attempted to "present himself in the best light which interfere[d] with his honest portrayal of his thought process."

Defendant did not accept responsibility for his criminal actions and did not understand how his actions were inappropriate or illegal. Even as recently as a week prior to the June 20, 2019 report, defendant denied threatening his victim with a screwdriver while acknowledging that he had a screwdriver in his pocket and may have moved it from one pocket to another. He also continued to blame the victim and the police for his arrest and had no insight into the underlying offense.

According to the police report of defendant's most recent criminal offense, on February 5, 2012, the victim was speaking with a friend near his apartment when defendant approached him speaking in English. The victim did not speak English, so his friend translated for him. Defendant claimed that he did not want the kids near his apartment and that they needed to leave. When the victim asked him what his problem was, defendant reached into his pocket and pulled out a screwdriver. The victim

attempted to walk away, but defendant blocked his path and continued to hold the screwdriver behind his back. Defendant then threatened the victim, stating if the victim called the police, he knew he would be arrested, but when he got out, he would rape the first kid he saw and kill the victim. The victim was afraid of defendant because of the "crazy things" he had done in the past and wanted the case prosecuted.

The June 20, 2019 report further noted defendant's inability to shift his viewpoint in the face of overwhelming evidence was a continuing concern and barrier to his discharge. Defendant had refused to accept feedback about the circumstances of his crime and could not see how his mental illness or substance abuse was present during his crime. Defendant stated that he would follow the rules of CONREP and would not touch a gun while he was on parole, but he failed to recognize that he had made exactly the same statements before and failed to follow through. Defendant viewed rules that he did not agree with as "'dumb' or 'stupid,'" and, therefore, ones that did not need to be followed. Even at Patton, he had frequently broken unit rules that he believed were "'stupid'" and had suffered consequences for breaking these rules but did not change his behavior. He had stopped trading items with his peers shortly before his release on CONREP, but upon his readmission he began trading even though he knew he was breaking the rules. As of the date of the report, defendant appeared to have stopped trading items with other patients for over one year and since he was "'caught.'" The doctors were concerned that defendant stopped this behavior, not because it was the right thing to do, but because he did not want to get into trouble.

Defendant had not demonstrated any significant mood swings in the past year. However, he had experienced some mild depression but denied any negative emotional state. The doctors believed that defendant's denial of experiencing any negative emotional state was an example of his lack of self-awareness and his lack of awareness of his mood and resultant behavior was "problematic and concerning." This lack of awareness concerned the doctors because defendant's offenses arose out of paranoia, fear, and anxiety that he could not identify and, therefore, could not prevent. In addition, the doctors noted that defendant's continued failure to understand and be aware of his mood prevented him from avoiding decompensation and acts of aggression because he could not "'fix' what he [did] not identify as a problem."

The doctors believed defendant continued to represent a substantial danger of physical harm to others by reason of his severe mental disorder. This opinion was based on the fact that during his most recent CONREP release, despite clear rules prohibiting him from any involvement with guns, defendant was found to be in possession of hand written notes and a book with information about guns, Nazism, sniper drills, items to help carry ammunition and weapons, and practices to improve shooting. Furthermore, defendant had a calendar with scheduled local gun shows and sales circled. He also made notes about logging onto the computer to buy a rifle and had written a letter to a friend asking to use the friend's eBay account to buy a rifle.

When confronted by CONREP with this information, defendant claimed that he had been looking at camping materials and somehow ended up on a website with

weapons. He also claimed that he did nothing wrong and that he did not know he was barred from using the Internet, notwithstanding the fact that he had had multiple conversations before his discharge with his treatment team members about the rules surrounding his access to guns and the Internet. It was not until March 2018 that defendant admitted that he knew he was not supposed to be on the Internet but was bored and wanted something to do. Defendant also stated that he decided to break the rules because he knew he was not going to be caught since they did not watch him a lot. He further explained that the rule was stupid because looking at guns was not a problem.

Although defendant had not engaged in any physical or verbal violent behavior since his readmission to Patton, his continued fascination with guns and natural disasters concerned the doctors. The doctors believed defendant had "'a lot of work to do to decrease his denial about his mental illness and lower his resistance to treatment in order to make progress in the program.'" The doctors noted that it was "'alarming that after receiving treatment in prison and DSH-Patton [defendant] ha[d] not'" benefitted from the services he had received. The doctors also opined that defendant's denial about his past criminal offenses elevated his risk for dangerousness, as he was "unable to recognize the problematic nature of his past, assaultive behaviors."

The June 20, 2019 report indicated that defendant had little to no awareness of his symptoms, their severity, or their impact on his behavior. Defendant continued to believe that he had no mental illness and any problems he had were not severe. As a result, he had an inability to recognize the risk he represents or develop a significant plan to avoid

future decompensation. In addition, defendant had made minor progress in the past year and had learned "what to say that [was] appropriate." The doctors, however, noted "his actual belief in the statement made [was] doubtful." Ultimately, the doctors concluded that defendant's lack of awareness regarding his mental illness, his "skewed perceptions of himself and his behaviors, and his inability to see his violent history, leads him to be at high risk for dangerousness towards others upon release at this time." The doctors also opined that defendant could not be treated safely and effectively in the community due to his lack of insight into his mental illness, denial of the severity of his crimes, and his belief that he was not responsible for his criminal behavior.

On November 13, 2019, the trial court issued its decision finding that defendant still qualified as an MDO pursuant to sections 2962 and 2970, and ordered defendant committed to the Department of State Hospitals for an additional year, from February 27, 2019 to February 27, 2020, and from February 27, 2020 to February 27, 2021.

On December 19, 2019, defendant filed a timely notice of appeal in both cases from the orders extending his commitment under the MDOA. (§ 2960, et seq.)

## III

## DISCUSSION

As previously noted, after defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV

DISPOSITION

The judgment is affirmed in both cases.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

FIELDS
J.